

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:04CR43

UNITED STATES OF AMERICA

VS.

JANICE EARLEEN McCOYLE

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ORDER

THIS MATTER is before the Court on Defendant's motion that the Court recommend to the Bureau of Prisons (BOP) that she be released to home confinement for the duration of her sentence. **See Defendant's "3582 Reduction of Sentence Motion for Home Confinement," filed October 14, 2008.** The motion is denied.

The Court may not reduce or otherwise modify a term of imprisonment once it has been imposed except that in any case the Court "upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)" if the Court finds that there

are extraordinary and compelling reasons that warrant such a reduction; the defendant is at least 70 years old; has served at least 30 years in prison for the current offense; and the Director of the BOP has determined the defendant is not a danger to the safety of any other person or the community. **See 18 U.S.C. § 3582(c)(1)(A).**

The Defendant alleges that extraordinary circumstances, her unemployability, her medical condition, the fact that she is not a danger to others or the community, her excellent adjustment to prison life, and that her stable and supportive family that will assist her when she is released, provide the justification for her release from custody into home confinement. **See Motion, *supra*.** However, the statute is clear that the Court has no authority to recommend her release; it is also clear that such a recommendation must come from the BOP after having considered the appropriate statutory requirements. Therefore, the Court is without jurisdiction to grant the relief sought by the Defendant.

IT IS, THEREFORE, ORDERED that the Defendant's motion for home confinement is hereby **DENIED**.

Signed: October 23, 2008

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

